

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/874,781	06/13/97	JOHNSON	B C348.12-0013

KINNEY & LANGE, P.A.  
THE KINNEY & LANGE BUILDING  
312 SOUTH THIRD STREET  
MINNEAPOLIS MN 55415-1002

QM12/1207

EXAMINER	
LEWIS, A	

ART UNIT	PAPER NUMBER
3761	38

DATE MAILED:  
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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.	08/874,871	Applicant(s)	Bruce C. Johnson
Examiner	A. J. Lewis	Group Art Unit	3761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address---

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 9/27/99.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 2-7, 16, 21, 23-48 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 24-7, 39; 16, 41; 23, 27, 43, 28-31, 44 is/are allowed.

Claim(s) 3, 24-26, 32-34, 36-38, 45-48 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of References Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 21 recites the limitation "...said resilient member..." in 10. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3,24,2636,47 are rejected under 35 U.S.C. 102(b) as being anticipated by Iriarte (Spanish patent 289561), for the reasons set forth in the office action dated 10/28/98.

As to claims 3,26,36,47, the body (2) is readable upon the flexible truss and the elastic strip (1) is readable upon the resilient member. The body (2) and elastic strip (1) as illustrated in figs.2,3 include a segment devoid of adhesive and which bridges a patient's nose between opposed ends of the body which adhere to outer wall tissues of a patient's nostrils (fig.2D) which is readable upon an intermediate segment.

As to claim 24, figs. 2A-D and fig.3 of Iriarte illustrate a resilient band (1) oriented substantially parallel to a longitudinal extent of the truss (2).

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 32-34,45; 37-38,46; 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iriarte.

As to claims 32,38, Iriarte, page 5, lines 9-14 discloses that portion of the surface of the body (2) which extends beyond the area of the resilient member (1) includes an adhesive for engaging a patient's outer wall tissues. Figs.2A-D and fig.3 illustrate a substantial portion of that side of the body which engages a patient's outer wall tissues and readable upon the intermediate section as discussed above, being covered by resilient member (1); therefore, it would have been obvious that a substantial portion of the intermediate section is not adhesively engaged with a patient's outer wall tissues.

As to claim 33, the resilient member (1) of Iriarte is placed adjacent a first side of the flexible strip of deformable material (2).

As to claims 34,37, while Iriarte discloses a singular resilient member (1), it would have been obvious to replicate the resilient member of Iriarte by mere duplication of an existing structural element. See *In re Harza*, 124 (USPQ) 378 (CCPA 1960); *St. Regis Paper Co., v. Benis Co., Inc.*, 193 USPW 8, 11 (7th Cir. 1977).

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As to claims 45,46,48, while Iriarte is silent as to the composition of the material of the truss (1), it is submitted that it would have been obvious to make the truss of Iriarte of any well known material including plastic as an obvious matter of design choice with no new or unobvious results accruing.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iriarte as applied to claims 32-34,45; 37-38,46; 48 above and further in view of Shippert ('402).

The difference between Iriarte and claim 25 is first and second release liners covering the adhesive substances on the first and second end regions of the flexible strip material.

Shippert, in an adhesively coated nose splint, teaches first and second release liners covering the adhesive substances on the first and second end regions of the flexible strip material for protecting the adhesive material prior to use.

It would have been obvious to modify the flexible strip of Iriarte to employ any well known means for protecting the adhesive material prior to application to a patient's nose including the use of first and second release liners covering the adhesive substances on any portion of the flexible strip including on the first and second end regions of the flexible strip material because it would have protected the adhesive prior to use as taught by Shippert.

*Allowable Subject Matter*

8. Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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9. Claim 21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

10. Claims 2,4-7,39; 16,41; 23,27,43; 28-31,44 are allowed.

*Response to Arguments*

11. Applicant's arguments filed 09/27/99 have been fully considered but they are not persuasive with respect to claims 3,24-26,32-34,36-38,45-48.

Applicant's arguments regarding claim 3 are disagreed with because Iriarte does not disclose an adhesive on the surface of the flexible strip (1) which faces a wearer's skin (on the bridge of the nose) during use. Accordingly, that surface constitutes an adhesive void which bridges a wearer's nose.

Applicant's arguments regarding claims 32,36 and 47 are disagreed with because Iriarte discloses an adhesive between the resilient strip (1) and the body (2) on page 5, lines 9-14. The end surfaces (surfaces which in use are adhered to and located on opposite sides of a wearer's nose) of the body (2) and strip (1) as illustrated in figs.2(a-d) and fig.3 are shown oriented in the same manner. The fact that there is an overlapping portion of body (2) due to its larger relative size does not exemplify end surfaces which are not oriented in the same manner. Further, the limitation "...said resilient member and said flexible strip of material each being in contact with an adhesive at a surface thereof oriented at least in part as are said end surfaces;..." as recited in claim 47 does not distinguish over the prior art in any manner. The strip (1) and body (2) of Iriarte are disclosed and illustrated as being adhesively connected. The body (2) includes an

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overlapping portion due to its relatively larger size which includes adhesive for adhering the nasal dilator to a patient's nose. The adhesive between the body and flexible strip of Iriarte is illustrated and disclosed to be "oriented" in all directions in which each of the flexible strip and body are. Accordingly, Iriarte continues to be prior art which is readable upon claims 32,36,47 for the reasons set forth herein above.

*Conclusion*

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Lewis whose telephone number is (703) 308-0716.

Aaron J. Lewis

December 4, 1999



Aaron J. Lewis  
Primary Examiner